REMARKS

In an office action dated June 21, 2007, the Examiner objected to the title as nondescriptive; objected to certain informalities in the specification; rejected claims 1-17 under 35 U.S.C. §112, second paragraph, as indefinite, and rejected claims 1-17 under 35 U.S.C. 102(e) as anticipated by Armstrong et al. (U.S. Patent 6,807,423).

Title

The Examiner has not offered any specific guidance with respect to descriptive matter which should be included in the title. In the absence of such guidance, applicant has amended the title in a manner believed to be more specific. If the Examiner still regards the amended title as defective, applicant respectfully requests that the Examiner point out more particularly what subject matter he feels should be included in the title.

Specification

The first paragraph of the Specification has been updated to reflect that the parent application is now abandoned.

Indefiniteness

Applicant has amended certain claims in responsive to the Examiner's indefiniteness rejections.

With respect to the objection to "said outgoing message", applicant understands this to be directed to the recitation of "said outgoing instant messages" in claims 7, 14 and 17. Applicant has amended claims 1, 8 and 15 to insert the word "outgoing" before a recitation of instant messages which are sent, thereby establishing antecedent basis for the phrase "outgoing instant messages".

With respect to the recitation of "said first user" at various places in claim 15, applicant has amended claim 15 to recite "a first user" in the first instance, and further included the clarification that the first user is a user of said computer system.

With respect to the phrase "said reporting availability" in claim 4, the Examiner has improperly truncated the phrase. Claim 1, upon which claim 4 depends, recites as one of its elements "an availability reporting function", i.e., a function that reports availability of a user. Dependent claim 4 then recites "said availability reporting function". Thus, clear antecedent basis is established in claim 1, and no amendment of the claim is required.

With respect to the same phrase in claim 11, the Examiner again improperly truncates the phrase, for claim 11 recites "said availability reporting step". Independent claim 8, upon which claim 11 depends, recites a "step" of "responsive to receiving said request for availability status, *reporting availability* status of said first user ..." Claim 11 is therefore referring to the previously recited step. Although it is true that claim 11 does not recite the entire step in full, it is a well established claiming practice to refer to steps in such an abbreviated manner, and there is no ambiguity as long as "said reporting availability step" can not possibly refer to any other previously recited step. Applicant therefore believes that further clarification is unnecessary. However, in the interests of furthering prosecution herein, applicant has amended claim 11 to remove the reference to the availability reporting step, which appears unnecessary in any case.

With respect to the recitations of a "first computer" and a "first user" in claim 1, applicant has amended claim 1 to delete "first" as a modifier of "user", there being only one user referenced in the claim. However, the claim clearly recites multiple "computer systems" attached to a network, and therefore the recitation of a particular one of those multiple systems is proper. Applicant therefore has not removed the modifier "first" from "computer system" Applicant further points out that to remove such a modifier would probably make the claim indefinite, for it

would then be unclear whether later recitations of a computer system refer to the "first" computer system or some other computer system on the network.

With respect to the recitation of a "first" user in claim 8, applicant makes the same observation as made above with respect to "first computer" in claim 1. Although applicant does not recite a "second user", he does recite other "users". Thus, the modifier "first" is used to distinguish a single user from other users of the group of users. To remove the modifier "first" would create, rather than remove, an ambiguity.

Prior Art

Applicant has amended the independent claims to further define the scope of the present invention. In particular, the independent claims have been modified to recite that availability is inferred from calendar data maintained by an independent calendar application. Dependent claims 3, 10 and 16 have been cancelled as superfluous. As amended, the claims are patentable over the cited art.

Applicant's invention is intended to enhance the usability of an instant messaging application by accessing independently maintained calendar data from a calendar application to infer availability of a user. Conventionally, instant messaging applications report availability of a user which is generally inferred from user activity, such as being logged on. However, these inferences tend to be very inaccurate. Users are known to log on and then leave their work area for extended periods, being unavailable during those periods.

Obviously, it is possible for the user to simply tell the system when he or she is available or not ("I'm here now", "I'm leaving now", etc.), but the reality is that this imposes a burden on users that few will choose to assume.

Applicant addressed this problem by accessing an independent database of calendar data. The importance of accessing the independently maintained calendar data is that it doesn't require the user to do anything additional to report availability to the other instant messaging users. The user is already maintaining the calendar data for other purposes. Thus, the instant messaging application simply taps into the calendar data that is already there, and uses it for a purpose for which it was never originally intended.

Armstrong, cited by the Examiner, discloses a system for tracking a "watched party" as that party moves from one location to another and logs on to, or in some way comes in contact with, digital devices attached via one or more networks to a tracking application. By tracking the watched party's movements, inferences can be made as to his location. The tracking system further allows the user to input data directly with respect to his availability at certain times and so forth for purposes of tracking the individual. *Armstrong* discloses that this capability can be used for, among other things, instant messaging.

The critical difference between *Armstrong* and applicant's invention is that, while *Armstrong* does indeed use a form of "calendar data" such as availability at certain times, it requires the user to input this data to the tracking application. Thus, the user is burdened with providing availability information. As disclosed by applicant, availability can be inferred from an independent calendar database, which does not require any special input to support the instant messaging availability function.

Since the original claims were unclear as to this distinction, applicant has amended the independent claims to clarify this point. Representative claim 1, as amended, recites:

1.   An instant messaging computer program product operating in a first computer system attached to a network of computer systems, said computer program product including a plurality of processor executable instructions recorded on signal-bearing media, wherein said instructions comprise:

an incoming message function, said incoming message function receiving incoming instant messages from users of other computer systems attached to said network, said other computer systems attached to said network executing respective instant messaging applications, said incoming message function further informing a user of said first computer system of receipt of said incoming instant messages;

an outgoing message function, said outgoing message function sending outgoing instant messages to said respective instant messaging applications executing in said other computer systems attached to said network; and

an availability reporting function, said availability reporting function reporting availability status of said user to one or more said respective instant messaging applications executing in said other computer systems attached to said network, *wherein said availability reporting function automatically infers whether said user is available by calling a calendar application to access calendar data concerning said user stored in at least one calendar data file maintained by said calendar application, said calendar application being an application independent of said instant messaging application.* [emphasis added]

The remaining independent claims, while not identical in scope, contain recitations analogous to the italicized language above.

The claims as amended are not anticipated by *Armstrong* because, inter alia, *Armstrong* does not disclose calling an independent calendar application to access calendar data in the calendar application's database. While *Armstrong* does disclose the use of "calendar data" in a general sense, it is data that the user is required to enter for that purpose, and not data which is maintained for another purpose by a calendar application and tapped into by the instant messaging application.

In the office action, the Examiner cites a passage from *Armstrong* for a teaching of subject matter previously claimed in the cancelled claims, and related to (although not the same as) the added language of the claims. This passage deserves close scrutiny, and is quoted below:

Docket No.:   ROC919990144US2
Serial No.:   10/720,878

> The capabilities of the PCP 10 are extended by using "cooked event triggers". These may include *non-communication-related* events that are provided from a third party service and which occur outside the multiple access network 11 (e.g., the watched party 13 checking into a hotel or checking in for an airline flight, entering information into a calendar service, etc.). Information about these events is provided to the PCP 10 via the events gateways 53-1 in protocol 16.
> . . .
> Examples of external services which may provide cooked event triggers include: security badge swipe systems, hotel registration systems, airline check-in systems, automated highway toll collection systems, calling card systems, etc. ...

As described, "entering information into a calendar service" is a "cooked event trigger", and various examples of cooked event triggers are given. A cooked event trigger is a "non-communication-related event". In other words, if "entering information into a calendar service" is a "cooked event trigger" (which is a "non-communication-related event"), *it is not the information that is entered into the calendar service that is relevant.* It is the fact that the user accessed the calendar service at a particular time and place. This fact is used to track the user. *Armstrong* does not explain what a "calendar service" is. It could be anything, and might even be a manual service performed on behalf of the user.[1]

For the reasons explained above, the claims as amended are not anticipated by *Armstrong*.

Nor are the claims obvious over *Armstrong*. *Armstrong* is directed to tracking a moving individual in real time by monitoring various events which show his movements. While this tracking data could be used in conjunction with instant messaging, there is nothing to suggest calling an independently maintained calendar application to obtain data about a user's availability and inferring availability from that data. The word "calendar" appears in *Armstrong*, but it is used in a different context, and does not refer to calendar applications of the type claimed by applicant.

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[1] The use of the word "service" definitely implies something manual. If a computer calendar application were intended, it would have been more natural to use the word "application", "program", or something similar.

In view of the foregoing, applicant submits that the claims are now in condition for allowance and respectfully requests reconsideration and allowance of all claims. In addition, the Examiner is encouraged to contact applicant's attorney by telephone if there are outstanding issues left to be resolved to place this case in condition for allowance. The Examiner is hereby authorized, without the need of further contact by Examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking.

Respectfully submitted,

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